IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

ORDER

MAHENDRA KUMAR SHARMA VS. STATE AND OTHERS

S. B. CIVIL WRIT PETITION NO. 3014/2004
UNDER ARTICLE 226 OF THE CONSTITUTION
OF INDIA.

DATE OF ORDER : 20th JANUARY, 2005.

HON'BLE MR.JUSTICE R.P. VYAS

Mr. Arjun Purohit for the petitioner.
Mr.Rameshwar Dave, Dy.Govt.Advocate.

Heard learned counsel for the parties and scanned the entire record.

The instant petition has been filed by the petitioner praying that the respondents may be directed to provide the benefit of Selection Grade to the petitioner by counting his service from the date of initial appointment, with all consequential benefits.

Brief facts giving rise to the instant writ petition are as follows:

Petitioner was initially appointed on the post of Field Assistant cum Tracer vide order dated 01.01.73 (Annexure-1) passed by Director (Designs)

Irrigation, Rajasthan Jaipur in the pay scale of Rs.110-230/-, with the following terms and conditions:

1. They are required to produce their original certificates regarding age and qualification to the Executive Engineer. They are also required to submit the medical certificate as required under rules.
2. Their appointment will be on ad hoc basis and their services are liable to be terminated on the availability of the suitable candidates from the G.A.D.(C) Raj. Jaipur on one month's notice, as the case may be.
3. Their pay will commence from the date they actually join their duties at the place of their posting.
4. They will be required to produce character certificate of two responsible persons, who are not related to them.
5. They will not be given any T.A. For joining the duty place.
6. The oath of alliance of India and to the Constitution of India as established by the Law will have to be taken in the prescribed form.
7. They will be required to join their duties within a time from the issue of this order otherwise appointment order will be treated as cancelled.

He was selected by the competent authority after following due process of selection.

It is submitted by the learned counsel that later on, the petitioner was given appointment on temporary basis on vacant post of Junior Draftsman vide order dated 06.12.94 (Annexure 2) in the pay scale of Rs.1200-2050/- as per conditions laid down under Rules 20 and 26 of the Rajasthan Engineering Services (Irrigation Branch) Rules, 1967.

The only relief claimed by the petitioner in the instant writ petition, is to the effect that the petitioner was appointed on 1.1.1973. On completion of 9, 18 and 27 years of service, he is entitled to get the benefit of Selection Grade from the date of initial appointment. But the State Government has issued a Notification dated 25.1.1992 (Annexure -3) mentioning therein that for the purposes of Selection Grade, the services shall be counted from the date of regular selection and not from the date of initial appointment.

It is also submitted that vide order dated 10.03.2003 (Annexure -5), the petitioner was informed by the respondent No.2 that since the petitioner has been given regular appointment w.e.f. 22.12.1993, therefore, he is entitled to get the benefit of Selection Grade from the date of regular appointment i.e. 22.12.1973 instead of initial appointment i.e. 01.01.1973.

It is submitted by the learned counsel for the petitioner that for redressal of his grievances, he sent a notice for demand of justice on 27.2.2004 (Annexure -6), but the same has not been considered.

Aggrieved with the inaction of the respondents in not granting the Selection Grade to the petitioner from the date of initial appointment, the instant petition has been filed.

Mr. Rameshwar Dave, Dy. Government Advocate, appearing for the respondents does not dispute the fact that the petitioner was not given the benefit of Selection Grade from the date of his initial appointment.

Learned counsel for the petitioner has relied on the judgment of the Full Bench of this Court given in The State of Rajasthan and others Vs. Farooq Ahmed and 59 others reported in W.L.C. (Rajasthan) 2005 page -1 and submitted that the petitioner ought to have been given the benefits of Selection Scale from the date of his initial appointment, instead of date of regular appointment, as this controversy has already been resolved by judgment of the Full Bench of this Court in Farooq's case (supra).

It is an admitted position on record that the petitioner was initially appointed vide order dated 01.01.1973 (Annexure-1) by the Competent Authority after interviewed on temporary ad hoc basis as Field

Asst. cum Tracer. Later on, he was appointed as Junior Draftsman on temporary basis vide order dated 06.12.1994 (Annexure 2) and all the benefits were extended to the petitioner from time to time. The main thrust of the argument of the learned counsel for the petitioner is that he was required to be granted selection grade on completion of 9, 18 and 27 years of service and the service tenure is required to be counted from the date of initial appointment, irrespective of the fact that the appointment was temporary or ad hoc.

I have perused the judgment rendered by the Larger Bench of this Court at Jaipur Bench, Jaipur in D.B. Civil Special Appeal No. 58/2004 The State of Rajasthan and others Vs. Farooq Ahmed and 59 others.

This controversy regarding extending the selection grade was set at rest by the Larger Bench, wherein it has been observed that where a person is appointed on ad hoc/temporary basis in accordance with Rules and in time-scale, period of ad hoc/temporary services rendered by him before his regularisation should be counted for purpose of grant of selection grade on completion of 9, 18 and 27 years of service from the date of initial appointment.

I have scanned and scrutinised the entire matter and all the facts and circumstances of the instant petition as well as the decision of the larger Bench rendered in the State of Rajasthan & Ors. Vs. Farooq Ahmed and others reported in (W.L.C. (Rajasthan) 2005(1)-page 1) decided on 7.10.2004.

This controversy has been set at rest while taking into consideration a series of decisions of the Hon'ble the Supreme Court as well as of other High Courts. I have also scanned the provisions of Rajasthan Civil Services Rules and different Notifications which have been issued by the State Government from time to time to extend the benefit of selection grade to the employees of Subordinate Services and reached to the conclusion that when a person has been appointed under the provisions of Service Rules whether temporary or ad hoc and getting all the benefits, for the purpose of giving selection grade, years of service would be counted for grant of the selection Grade from the date of first appointment in the existing cadre.

Thus, in this view of the matter, he is entitled to get the benefit of selection grade only from the date of his initial appointment and not from the date of regularisation of his services.

In view of this admitted position, the writ petition is allowed in terms of the order dated 07.10.2004 passed in (F.B.) D.B. Civil Special Appeal No.58/2004 decided on 7th October, 2004. The respondents are directed to give the benefit of Selection Grade to the petitioner while counting his services from the date of his initial appointment.

The instant petition stands allowed as indicated above.

(R.P.VYAS)J.

/Anil/